HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.8840 of 2005

Dated: 29th August, 2005

Between:

1. B.Kurumurthy S/o.Ramchandra Reddy,

R/o.Pebbair village and Mandal, Mahabubnagar

District and 3 others.

…Petitioners

AND

1.The Joint Collector, Mahabubnagar and 7 others.

…Respondents

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.8840 of 2005

ORDER:

This writ petition has been filed by the petitioners, who are four in number, assailing the order of the Joint Collector, Mahabubnagar District-1st respondent passed in Case No.D2/409/05 dated 19.03.2005.

2. The petitioners are owners of land bearing Survey Nos.475 and 476 of Pebbair village and Mandal, Mahabubnagar District. The said lands are stated to be wet lands. According to the petitioners, there was a feeder channel to their lands to draw

water through the lands bearing Survey Nos.485 and 486, which was dismantled by the respondents 4 to 8. They approached the Mandal Revenue Officer, Pebbair, for restoration of the feeder channel. The Mandal Revenue Officer by an order dated 12.01.2005 ordered for restoration of the feeder channel to the lands of the petitioners. The respondents 4 to 8 herein carried the matter in revision before the Joint Collector, Mahabubnagar District. The Joint Collector, on considering the material on record and on hearing the arguments of counsel of both parties, recorded a finding that the Mandal Revenue Officer, Pebbair is not an Irrigation Officer within the meaning of Section 2(e) of the Andhra Pradesh Irrigation (Construction and Maintenance of Water Courses) Act, 1965 (Act 12 of 1965) (for short, 'the Act') and thereby set aside the order of the Mandal Revenue Officer, Pebbair. I deem it appropriate to refer the relevant portion of the order passed by the Joint Collector, Mahabubnagar and it is thus:

> "Heard the arguments of both the advocates, perused the records and the written arguments filed by the counsel for the Revision Petitioners.
>
> As seen from the contents of the instructions issued by the MRO, Pebbair vide Ref.No.E/22/02/02/2004 dated 12.01.2005 to the Dy.E.E. (I.B.) Kothkota and President of W.U.A. it is evident that the learned MRO issued the said instructions U/S. 2(e)(f) of (iv) of the A.P. Irrigation (Construction and Maintenance of Water Courses) Act, 1965.
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> According to clause (e) of Section 2 of the A.P. Irrigation (Construction and Maintenance of Water Courses) Act, 1965 herein after called as "Act 12 of 1965" Irrigation Officer means any officer of the Revenue Department or the Public Works Department not below the rank of a Revenue Divisional Officer or an Executive Engineer empowered or authorized by the Government to exercise all or any of the functions of an Irrigation Officer under the Act.
>
> It is thus quite clear that the Mandal Revenue Officer, Pebbair who is not an Irrigation Officer within the meaning of clause (e) of Section 2 of Act 12 of 1965 has exercised the powers of an Irrigation Officer by issuing instructions to the Dy.E.E. (I.B.) Kothkota and WUA President of Mahabhupalasamudram, Pebbair for restoration of feeder channel through Sy. Nos.485, 486 and 482 belonging to the Revision Petitioners which tantamounts abuse of authority.
>
> I am therefore of the opinion that the above orders of the MRO, Pebbair deserves to be set aside.
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> In the result, the Revision Petition is allowed and the orders issued by the MRO, Pebbair vide Ref.No.E/22/02/2004 dated 12.01.2005 instructing the Dy.E.E. (I.B.), Kothkota and WUA President of Mahabhupalasamudram,

> Pebbair for restoration of field channel through Sy. Nos.485, 486 and 482 belonging to the Revision Petitioners to facilitate water supply to the ayacut lands bearing Sy.Nos.475 and 476 is quashed to meet the ends of justice."

Assailing the order of the Joint Collector, Mahabubnagar, the petitioners have filed the writ petition.

3. Learned Counsel appearing for the petitioners submits that the Joint Collector, Mahabubnagar District, has committed an error in reviewing the order of the Mandal Revenue Officer, Pebbair, in exercise of powers under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1907 (Fasli 1317). He further submits that the Joint Collector ought to have directed the Revenue Divisional Officer, Wanaparthy, Mahabubnagar District, who is authorized officer under the said Act to conduct necessary enquiry and pass appropriate orders.

4. Learned Counsel appearing for the respondents 4 to 8 supported the order of the Joint Collector.

5. It is the case of the petitioners that there was a feeder channel to their lands to draw water through the lands bearing Survey Nos.485, 486 and 482 owned by the respondents 4 to 8 and since the respondents 4 to 8 closed the said channel, they approached the Mandal Revenue Officer, Pebbair for restoration of the same.

6. It is no more in dispute that the Mandal Revenue Officer, Pebbair is not the competent authority to pass any orders under the Act. Section 2(e) of the Act defines *Irrigation Officer* and it is thus:

> "(e). "*Irrigation Officer*" means any officer of the Revenue Department or the Public Works Department not below the rank of a Revenue Divisional Officer or an Executive Engineer, empowered or authorised by the Government to exercise all or any of the functions of an Irrigation Officer under this Act;"

Section 5 of Act contemplates the enquiry into the objections. Since the Mandal Revenue Officer is not competent to pass any orders for restoration of the irrigation channel under the said Act, the order passed by him is not legal and proper.

Therefore, I do not see any flaw in the order passed by the Joint Collector, Mahabubnagar. However, the petitioners are at liberty to file necessary applications before the Revenue Divisional Officer, Wanaparthy, who is the authorized Irrigation Officer within the meaning of Section 2(e) of Act for passing necessary orders.

7. Accordingly, this writ petition is disposed of giving liberty to the petitioners to approach the Revenue Divisional Officer, Wanaparthy, Mahabubnagar District, who is an Irrigation Officer within the meaning of Section 2(e) of the Act. No costs.

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B.SESHASAYANA REDDY, J.

Dated: 29th August, 2005.

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